

SENATE BILL No. 511

DIGEST OF INTRODUCED BILL

Citations Affected: IC 12-17.2-2-1; IC 24-10.

Synopsis: Child product safety. Prohibits a person from manufacturing, remanufacturing, retrofitting, distributing, selling at wholesale or retail, contracting to sell or resell, leasing, subletting, or otherwise placing into the stream of commerce an unsafe children's product. Requires the state department of health to: (1) create and maintain a list of unsafe children's products; (2) update the list within 24 hours after identifying an unsafe children's product; (3) make the list available to the public and on the state department's web site; and (4) print information regarding the list of unsafe children's products. Requires certain business entities to provide notice to commercial customers and consumers and meet other requirements regarding unsafe children's products. Prohibits a child care facility from having an unsafe children's product on the child care premises. Requires: (1) the owner of a child care facility to post a written notice in the child care facility concerning unsafe children's products; and (2) the division of family resources to provide certain information to licensed and registered child care facilities. Allows the division to take disciplinary action against a child care facility for violating the child product safety laws. Provides that a person who violates the child product safety laws is subject to a civil penalty that does not exceed \$500 for each day of violation. Provides that the attorney general may: (1) bring an action to enforce a penalty; (2) require a person to provide certain statements and information; (3) examine a person under oath; (4) examine certain materials; (5) seize and retain records, books, document, accounts, papers, or samples of merchandise; and (6) bring an action for an injunction. Allows the attorney general to accept an assurance of

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Effective: Upon passage.

Howard

January 23, 2007, read first time and referred to Committee on Corrections, Criminal, and Civil Matters.



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Digest Continued

voluntary compliance. Provides that a violation of the assurance is prima facie evidence that a person has violated the child product safety laws.

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Introduced

First Regular Session 115th General Assembly (2007)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2006 Regular Session of the General Assembly.

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SENATE BILL No. 511

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulation.

Be it enacted by the General Assembly of the State of Indiana:

- 1 SECTION 1. IC 12-17.2-2-1, AS AMENDED BY P.L.145-2006,
- 2 SECTION 91, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE
- 3 UPON PASSAGE]: Sec. 1. The division shall perform the following
- 4 duties:
- 5 (1) Administer the licensing and monitoring of child care centers
- 6 or child care homes in accordance with this article.
- 7 (2) Ensure that a national criminal history background check of
- 8 the applicant is completed through the state police department
- 9 under IC 10-13-3-39 before issuing a license.
- 10 (3) Ensure that a criminal history background check of a child
- 11 care ministry applicant for registration is completed before
- 12 registering the child care ministry.
- 13 (4) Provide for the issuance, denial, suspension, and revocation of
- 14 licenses.
- 15 (5) Cooperate with governing bodies of child care centers and



child care homes and their staffs to improve standards of child care.

(6) Prepare at least biannually a directory of licensees with a description of the program capacity and type of children served that will be distributed to the legislature, licensees, and other interested parties as a public document.

(7) Deposit all license application fees collected under section 2 of this chapter in the division of family resources child care fund established by IC 12-17.2-2-3.

(8) Require each child care center or child care home to record proof of a child's date of birth before accepting the child. A child's date of birth may be proven by the child's original birth certificate or other reliable proof of the child's date of birth, including a duly attested transcript of a birth certificate.

(9) Provide an Internet site through which members of the public may obtain the following information:

(A) Information concerning violations of this article by a licensed child care provider, including:

(i) the identity of the child care provider;

(ii) the date of the violation; and

(iii) action taken by the division in response to the violation.

(B) Current status of a child care provider's license.

(C) A link to the state department's list of unsafe children's products as provided under IC 24-10-3-1.

~~(C)~~ **(D)** Other relevant information.

The Internet site may not contain the address of a child care home or information identifying an individual child. However, the site may include the county and ZIP code in which a child care home is located.

(10) Provide or approve training concerning safe sleeping practices for children to:

(A) a provider who operates a child care program in the provider's home as described in IC 12-17.2-3.5-5(b); and

(B) a child care home licensed under IC 12-17.2-5;

including practices to reduce the risk of sudden infant death syndrome.

(11) Provide the information required under IC 24-10-3 concerning unsafe children's products.

SECTION 2. IC 24-10 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 10. CHILDREN'S PRODUCT SAFETY

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Chapter 1. Definitions

Sec. 1. The definitions in this chapter apply throughout this article.

Sec. 2. "ASTM International" means the American Society for Testing and Materials International.

Sec. 3. "Business entity" means a commercial dealer, a manufacturer, an importer, a wholesaler, or a distributor.

Sec. 4. "Child care facility" means:

- (1) a child care center licensed under IC 12-17.2-4;**
- (2) a child care home licensed under IC 12-17.2-5; or**
- (3) any other person exempt from licensure under IC 12-17.2-2-8.**

Sec. 5. (a) "Children's product" means a product that is designed or intended:

(1) for:

(A) the care of; or

(B) use by;

a child who is less than twelve (12) years of age; and

(2) to come into contact with the child while the product is being used.

(b) The term includes a full-size crib, a non-full-size crib, a toddler bed, a bed, a car seat, a chair, a high chair, a booster chair, a hook-on chair, a bath seat, a gate or other enclosure for confining a child, a play yard, a stationary activity center, a carrier, a stroller, a walker, a swing, a toy, or other play equipment.

(c) The term does not apply to the following products:

(1) A product that:

(A) may be used by or for the care of a child who is less than twelve (12) years of age;

(B) is designed or intended for use by the general population or segments of the general population; and

(C) is not solely or primarily for use by or for the care of a child; or

(2) A product that:

(A) is a medication, drug, or food; or

(B) is intended to be digested.

Sec. 6. "Commercial dealer" means a person that:

(1) deals in children's products;

(2) by the person's occupation, holds the person out as having knowledge or skill peculiar to children's products; or

(3) is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing children's products

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into the stream of commerce.

Sec. 7. "Crib" means a bed or containment designed to accommodate an infant.

Sec. 8. (a) "Distributor" or "wholesaler" mean a person that sells, resells, or otherwise places a children's product into the stream of commerce.

(b) The term does not include a manufacturer or retailer.

Sec. 9. "Division" means the division of family resources established by IC 12-13-1-1.

Sec. 10. "End consumer" means a person that purchases a children's product for any purpose other than resale.

Sec. 11. (a) "First seller" means a retailer that sells a children's product that has not been used or previously owned.

(b) The term does not include an entity, such as a secondhand or resale store.

Sec. 12. "Full-size crib" means a crib that has the dimension requirements under 16 CFR 1508.3.

Sec. 13. "Importer" means a person that:

- (1) brings into the United States; and
- (2) places into the stream of commerce;

a children's product.

Sec. 14. "Infant" means an individual who is less than:

- (1) thirty-five (35) inches in length; and
- (2) three (3) years of age.

Sec. 15. "Manufacturer" mean a person that:

- (1) makes; and
- (2) places into the stream of commerce;

a children's product.

Sec. 16. "Non-full-size crib" has the meaning set forth in 16 CFR 1509.2.

Sec. 17. "Person" means:

- (1) an individual, a firm, a corporation, a limited liability company, or an association; or
- (2) an agent of an individual or entity listed under subdivision (1).

Sec. 18. (a) "Retailer" means a person that sells, leases, or sublets children's products.

(b) The term does not include a manufacturer, distributor, or wholesaler.

Sec. 19. "Retrofit" means to replace existing parts, equipment, or components with updated parts, equipment, or components to repair or remove hazards that lead to the recall of a children's

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product.

Sec. 20. "State department" means the state department of health.

Chapter 2. Prohibited Conduct

Sec. 1. This article does not apply to a children's product:

(1) that is retrofitted if the:

(A) retrofitted children's product requires assembly by the consumer;

(B) approved pieces for the retrofitted children's product are provided with the children's product by the business entity; and

(C) instructions explaining how to apply the retrofitted pieces accompany the children's product at the time of sale; or

(2) if the business entity of a previously unsold children's product retrofits the children's product, as approved or recommended by an agency of the federal government, before sale of the children's product.

Sec. 2. (a) Except as provided in subsections (c) and (e), a business entity may not:

(1) manufacture;

(2) remanufacture;

(3) retrofit;

(4) distribute;

(5) sell at wholesale or retail;

(6) contract to sell or resell;

(7) lease;

(8) sublet; or

(9) otherwise place into the stream of commerce;

a children's product that is unsafe as described in section 3 of this chapter.

(b) An unsafe children's product may be retrofitted if the retrofit has been approved by an agency of the federal government.

(c) A retrofitted children's product may be sold if the children's product is accompanied at the time of sale by a notice that:

(1) includes a statement that the children's product is safe for use by a child less than twelve (12) years of age; and

(2) meets the requirements under subsection (d).

(d) The notice under subsection (c) must include:

(1) a description of the original problem that made the recalled children's product unsafe;

(2) a description of the retrofit that explains how the original

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problem was eliminated and a statement that the children's product is now safe for use by a child less than twelve (12) years of age;

(3) the name and address of the business entity that:

(A) retrofitted the children's product; and

(B) certifies that the children's product was retrofitted; and

(4) the name and model number of the retrofitted children's product.

A business entity shall ensure that the notice is presented with the retrofitted children's product at the time of sale.

(e) A business entity does not violate subsection (a)(5) if, on the day before the business entity sells the children's product, the children's product did not appear on the state department's list established under IC 24-10-3.

Sec. 3. (a) A children's product is unsafe if the children's product meets one (1) or more of the following conditions:

(1) The children's product does not conform to all federal laws and regulations that set forth standards for children's products.

(2) The children's product has been recalled:

(A) for any reason; or

(B) by:

(i) an agency of the federal government; or

(ii) a business entity;

and the recall has not been rescinded.

(b) A crib is considered unsafe if the crib does not conform with the standards endorsed or established by the:

(1) United States Consumer Product Safety Commission, including the standards established under 16 CFR 1000 et seq.; and

(2) ASTM International for the standards under the following:

(A) 16 CFR 1508, 16 CFR 1509, and 16 CFR 1303.

(B) For corner posts of baby cribs and structural integrity of baby cribs, ASTM F 966, ASTM F 1169, and ASTM F 406.

Chapter 3. Notice Requirements

Sec. 1. The state department shall:

(1) maintain a comprehensive list of children's products that the state department has identified as unsafe as described in IC 24-10-2-3;

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- (2) update the comprehensive list not later than twenty-four (24) hours after the state department has identified a children's product as unsafe;
- (3) make the comprehensive list available to the public;
- (4) post the comprehensive list on the state department web site on the Internet with links to specific recall notices or warnings concerning the unsafe children's products; and
- (5) print information regarding the comprehensive list in regular publications or mailings to persons, including pediatricians, local health departments, and other similar persons and entities.

Sec. 2. (a) If:

- (1) a business entity places a children's product into the stream of commerce in Indiana; and
- (2) the business entity or an agency of the federal government issues a recall on the children's product;

the business entity shall not later than twenty-four (24) hours after the recall was issued initiate the requirements under subsection (b).

(b) Except as provided in section 4 of this chapter, a business entity described in subsection (a) shall do the following:

- (1) Contact all the commercial customers, other than consumers, to whom the business entity sold, leased, sublet, or transferred the recalled children's product.
- (2) If the business entity maintains an Internet web site, place on the homepage (or the first point of entry) of the business entity's web site a link to recall or warning information that contains the specific recall notice or warning that was issued for the children's product. The recall or warning information under this subdivision:

(A) must include:

- (i) a description of the children's product;
- (ii) the reason for the recall or warning;
- (iii) a picture of the children's product; and
- (iv) instructions on how to participate in the recall or warning; and

(B) must provide information to a person that allows the person to participate in the recall or warning through the business entity's web site.

Except for information on return and exchange policies for a recalled children's product, the recall or warning information may not include sales or marketing information on the children's product or any other product.

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(3) If the:

(A) business entity sold a children's product directly to a consumer; and

(B) the consumer provided:

(i) a shipping address; or

(ii) an electronic mail address;

at the time of sale of the children's product;

the business entity shall send a notice as described in subsection (c) of the recall or warning of the children's product to the consumer.

(c) The notice under subsection (b)(3):

(1) must include:

(A) a description of the children's product;

(B) the reason for the recall or warning; and

(C) instructions on how to participate in the recall or warning; and

(2) may include only the children's product recall information; and

(3) except for information on return and exchange policies for the children's product, may not include sales or marketing information on the:

(A) children's product; or

(B) any other product.

Sec. 3. (a) If a retailer:

(1) receives notice of a recall or warning regarding a children's product from:

(A) a business entity; or

(B) a federal agency; and

(2) offered, at any time, the children's product for sale in Indiana;

the retailer shall meet the requirements established under subsection (b).

(b) Except as provided in section 4 of this chapter, a retailer described under subsection (a) shall do the following:

(1) Not later than three (3) business days after receiving the recall or warning, remove the children's product from the shelves of the retailer's stores to ensure that the children's product is not sold at the retailer's store.

(2) If the product is sold through the retailer's Internet web site, not later than three (3) business days after receiving notice of the recall or warning, remove the:

(A) children's product from the retailer's web site; or

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(B) ability of a consumer to purchase the children's product through the retailer's web site.

(3) If a shipping address or an electronic mail address was provided by a consumer to a retailer at the time a children's product was purchased on the retailer's web site, attempt to contact the consumer regarding the recall or warning information on the children's product. The recall or warning information:

(A) must include:

- (i) a description of the children's product;
- (ii) the reason for the recall or warning; and
- (iii) instructions on how to participate in the recall or warning;

(B) may include only the children's product recall information; and

(C) except for information on return and exchange policies for the children's product, may not include sales or marketing information on the children's product or any other product.

The retailer shall comply with this subdivision not later than thirty (30) days after receiving the recall or warning notice on a children's product.

(4) Not later than five (5) business days after receiving the recall or warning, post in a prominent location in each retail store owned by the retailer the recall or warning notice on the children's product. The notice must remain posted in the retail store for one hundred twenty (120) days after the date the retailer received the recall or warning notice.

(5) If the retailer maintains an Internet web site, not later than five (5) business days after receiving the recall or warning notice, place on the homepage (or the first point of entry) of the retailer's web site a link to the recall or warning information that contains the specific recall notice or warning that was issued for the children's product. The recall or warning information under this subdivision:

(A) must include:

- (i) a description of the children's product;
- (ii) the reason for the recall or warning;
- (iii) a picture of the children's product; and
- (iv) instructions on how to participate in the recall or warning; and

(B) must provide information to a person that allows the

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1 person to participate in the recall or warning through the
2 retailer's web site.

3 Except for information on return and exchange policies for
4 the children's product, the recall or warning information may
5 not include sales or marketing information on the children's
6 product or any other product.

7 Sec. 4. (a) A retailer that is not a first seller shall, not later than
8 five (5) business days after a recalled children's product is placed
9 on the state department's list under section 1 of this chapter,
10 comply with section 3(b) of this chapter. A retailer described under
11 this subsection has five (5) business days to comply with both
12 section 3(b)(1) and 3(b)(2) of this chapter.

13 (b) A business entity that is also a retailer shall;

14 (1) comply with sections 2 and 3 of this chapter; and

15 (2) place, not later than twenty-four (24) hours after issuing
16 or receiving a notice or warning of the recall, on the business
17 entity's homepage and retailer's homepage (or the first point
18 of entry) of the business entity's web site and retailer's web
19 site, a link to the recall or warning information that contains
20 the specific recall notice or warning that was issued for the
21 children's product.

22 Chapter 4. Child Care Facilities

23 Sec. 1. (a) A child care facility may not have on the child care
24 premises an unsafe children's product as described under
25 IC 24-10-2-3.

26 (b) This section does not apply to an antique or collectible
27 children's product if the children's product is not:

28 (1) accessible to; or

29 (2) used by;

30 a child in a child care facility.

31 Sec. 2. An owner of a child care facility shall post a written
32 notice of the existence of the list of unsafe children's products
33 available on the state department's web site under IC 24-10-3-1 in
34 prominent locations that are regularly visited by parents in the
35 child care facility.

36 Sec. 3. (a) The division shall, on an ongoing basis:

37 (1) notify a licensed or registered child care facility of the
38 requirements under this article; and

39 (2) provide a licensed or registered child care facility with the
40 list of unsafe children's products maintained by the state
41 department under IC 24-10-3-1;

42 in plain, nontechnical language that allows each child care facility

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1 to effectively inspect a children's product and identify an unsafe
2 children's product.

3 (b) The division may take disciplinary action against a licensed
4 or registered child care facility for a violation of this article.

5 Chapter 5. Penalties and Enforcement

6 Sec. 1. A person that violates this article is subject to a civil
7 penalty in an amount that does not exceed five hundred dollars
8 (\$500) for each day that the violation continues.

9 Sec. 2. The attorney general may bring an action to enforce a
10 penalty under section 1 of this chapter.

11 Sec. 3. If the attorney general believes that a person has violated
12 this article, receives a written complaint from a consumer that a
13 person has violated this article, or believes that it is in the public
14 interest that the attorney general investigate a person that has
15 violated this article, the attorney general may do the following:

16 (1) Require the person to file a statement or report in writing
17 and under oath, or as otherwise required by the attorney
18 general regarding information the attorney general considers
19 necessary.

20 (2) Examine a person under oath in connection with the
21 conduct of any trade or commerce.

22 (3) Examine any merchandise, or samples of merchandise,
23 records, books, documents, accounts, or papers the attorney
24 general considers necessary.

25 (4) Under an order of a court, seize and retain any records,
26 books, documents, accounts, papers, or samples of
27 merchandise that is produced in accordance with this article
28 until the completion of an investigation and a proceeding.

29 Sec. 4. (a) The attorney general may accept an assurance of
30 voluntary compliance with this article from a business entity or
31 retailer.

32 (b) A violation of an assurance of voluntary compliance is prima
33 facie evidence that a business entity or retailer has violated this
34 article in any subsequent proceeding brought by the attorney
35 general against the business entity or retailer with regard to a
36 specific violation addressed in the assurance of voluntary
37 compliance.

38 Sec. 5. If the attorney general has reason to believe that:

- 39 (1) a business entity or retailer has violated this article; and
40 (2) initiating proceedings against the business entity or
41 retailer would be in the public interest;

42 the attorney general may bring an action to restrain by

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1 preliminary or permanent injunction the actions of the business
2 entity or retailer.

3 Sec. 6. This article does not relieve a business entity or retailer
4 from complying with stricter requirements imposed under federal
5 law or rules established by an agency of the federal government.

6 SECTION 3. An emergency is declared for this act.

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